IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/09/2003

CORAM

THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN

W.P.No.15830 of 2003
and W.P.Nos. 16113, 16575, 16327, 13304, 15343, 14994,
14995, 15553, 15274, 15275, 15068, 15255, 15325, 15349, 15412, 15424,
15425, 15453, 15431, 15432, 15441, 15503, 15522, 15524, 15599, 15691, 15796,
16469, 16470 and 19112 of 2003

and

W.P.M.P.Nos.19893, 19894, 20180, 20181, 20755, 20756, 20427, 16715,
19255, 22764, 22765, 18776, 18778, 23428, 21915, 22556, 19541, 19542, 19159
to 19162, 18870, 18871, 19151, 19230, 19259, 19260, 19341, 19357 to
19360, 19398, 19367, 19369, 19382, 19472, 19494, 19495, 19497,
19498, 19604, 19605, 19714, 19848, 19849, 20576 and 20577 of 2003

and

W.V.M.P.Nos.1206, 1207 and 1254 of 2003

W.P.No.15830 of 2003:

1. Dr.R.Ilayaraja
2. N.S.Karthikeyan
3. Dr.S.Mohaideen Noushadh Gani
4. Dr.R.Aruna Priyadarshini
5. Dr.S.Bhama ... Petitioners.

-Vs-

1. State of Tamil Nadu,
rep. by its Secretary to Govt.,
Health and Family Welfare Department,
Fort St.George, Chennai-9.

2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai-10.

3. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai-10. ... Respondents.

Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of declaration as stated therein.

For Petitioners :: Mr.K.M.Vijayan, Sr.counsel for M/s.La Law in W.P.Nos.15830, 16113, 16575,15343, 14994 and 14995 of 2003

Mr.R.Shivakumar, for petr. in W.P.No.16327 of 2003
Mr.M.Ravi, for petr. in W.P.13304 of 2003
Mr.G.Thangavel, for petr. in W.P.15553 of 2003
Mr.J.James, for petr. in W.P.Nos.15274 & 15275 of 2003
Mr.S.R.Sundar, for petr. in W.P.No.15068 of 2003
Mr.R.Subramanian, for petr. in W.P.No.15072 of 2003
Mr.C.Prakasam, for petr. in W.P.No.15255 of 2003
Mr.N.Damodaran, for petr. in W.P.No.15325 of 2003
Mr.D.Prasanna, for petr. in W.P.No.15349 of 2003
Mr.V.Chandrasekaran, for petr. in W.P.No.15412 of 2003
Mr.Srinath Sridevan for petr. in W.P.Nos.15424 & 15425/2003
Mr.S.Thiruvenkadam, for petr. in W.P.No.15453 of 2003
Mr.P.Raja, for petr. in W.P.Nos.15431,15432 & 15691/2003
Mr.V.Dhanapalan, for petr. in W.P.nos.15441 & 15503/2003
Mr.R.Singaravelan, for petr. in W.P.No.15522 of 2003
Mr.A.K.Kumaraswamy for petr. in W.P.No.15524 of 2003
Mr.S.Doraisamy, for petr. in W.P.No.15599 of 2003
Mr.S.Sashikumar, for petr. in W.P.No.15796 of 2003
Mr.R.Balasubramaniam,for petr.in W.P.Nos.16469 & 16470/2003
Mrs.Hema Sampath, for petr. in W.P.No.19112 of 2003

For Respondents in all petns. : Mr.N.R.Chandran, Advocate-General assisted by Mr.V.R.Rajasekaran,Spl.G.P.(Edn.)

Mr.V.Ayyadurai, for petr. in W.V.M.P.Nos.1206 & 1207 of 2003 and in W.P.M.P.Nos.22764 & 22765 of 2003

Mr.K.Doraisamy, Sr.counsel for M/s.Muthumani Doraisamy for for petr. in W.P.M.P.No.23428 of 2003

Mr.L.S.M.Hasan Fizal, for petr. in W.P.M.P.No.22556 of 2003

:ORDER

The petitioners in the various writ petitions have challenged some of the clauses in the prospectus issued by the Selection Committee, Directorate of Medical Education, Chennai for the admission to Post Graduate Diploma/Degree/ M.D.S./ Five Year M.Ch.(Neuro-Surgery) Courses in Tamil Nadu Government Medical/Dental and Self-Financing Dental Colleges.

2. The petitioners have challenged clause-28 of the said prospectus in so far as it empowers the Government to reduce the minimum eligibility marks for service candidates to fill up unfilled service vacancies in the general interest of the public. The petitioners have also challenged the clauses-32 and 33 which provide that there will be no rechecking/revaluation/retotalling of answer sheets and no candidate will be allowed to take back the booklets and request for provision of Xerox copies of the question booklet and answer sheets will not be entertained. Some of them have challenged the clause-48 and some others have challenged the clause 61(c) of the prospectus. For the sake of convenience, I consider clause by clause challenged in the writ petitions.

Preliminary objections:-

3. Learned Advocate General submitted that the writ petitions are not maintainable, and according to him, the prospectus is binding and the petitioner who have taken up the examinations on the basis of the prospectus are not entitled to question the same after they found themselves not eligible for admission. Learned Advocate General referred to the decision of a Bench of this Court in RATHNASWAMY,Dr.A., v. DIRECTOR OF MEDICAL EDUCATION (1986 WRIT L.R. 207) and the decision of a Full Bench of this Court in MURALI,R. Dr. v. Dr.R.KAMALAKKANNAN (1999(III) CTC 675) and also the decision of the Supreme Court in K. DURAISAMY v. STATE OF T.N. (2001) 2 SCC 538) and submitted that the Supreme Court has not gone into the question of estoppel since the Supreme Court decided the case on merits of the matter. Learned Advocate General also submitted that some of the petitioners have filed the writ petitions after taking up the counselling and since they took up the chance in the counselling and after having failed in the process of selection, it is not open to them to challenge the prospectus in the writ petitions. In so far as service candidates are concerned his next submission is that the service candidates form a separate category from the open category candidates and there are two groups and it is not open to the petitioners who are in open category to question 50% of the seats made available to inservice candidates and therefore it is not open to them to challenge some of the clauses in the prospectus relating to the inservice candidates. I propose to deal with the preliminary objections raised by the learned Advocate General when I consider the validity of the clauses of the prospectus.

Clause-28:-

4. The first clause that is under challenge is the clause-28 and the relevant portion of clause-28 of the prospectus which is challenged in the writ petitions reads as under:-

" Government has the right to reduce the minimum eligibility marks for service candidates to fill up unfilled service vacancies in the general interest of the public."

5. I heard Mr.K.M.Vijayan, learned senior counsel appearing for the petitioners. The submission of Mr.K.M.Vijayan, learned senior counsel is that the portion of clause-28 which is under challenge in the writ petitions was not found in the prospectus issued for the earlier years and in the previous years, in some cases, the minimum 40% marks prescribed in the prospectus were reduced in favour of inservice candidates and inservice

candidates were allotted seats and the selection was challenged before this Court and this Court held that it is impermissible for the State to reduce the minimum marks for admission to P.G. courses. He also submitted that the present clause which is under challenge has been introduced only to get over the decision of this Court. He submitted that under the Postgraduate Medical Education Regulations,2000 framed by the Medical Council of India (hereinafter referred to as 'the Medical Council of India Regulations') under Section 33 of the Indian Medical Council Act, 1956, the Medical Council has prescribed 40% as minimum marks for eligibility for admission to postgraduate medical courses and therefore, the State Government has no power to reduce the minimum percentage of marks for eligibility for admission to postgraduate medical courses.

6. I am of the view, Mr.K.M.Vijayan, learned senior counsel is well-founded in his submission that the State Government has no power to reduce the minimum percentage of marks for eligibility for admission to postgraduate medical courses prescribed by the Medical Council of India. The Medical Council of India has fr amed the Regulations in exercise of the powers conferred on it under clause(l) of section 33 of the Indian Medical Council Act and I hold that once the minimum percentage of marks for eligibility for admission to postgraduate medical courses is prescribed by the Medical Council of India, it is impermissible for the State Government to reduce the said minimum percentage of marks. The Supreme Court in DR.PREETI SRIVASTAVA V. STATE OF M.P. (1999) 7 SCC 120) held that in every case the minimum standards as laid down by the Central statute or under Medical Council Regulations have to be complied with by the State while making admissions and the State Government may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry-25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down.

7. The Supreme Court in DR.SADHNA DEVI v. STATE OF U.P. (1997) 3 SCC 9) has also held that the minimum marks prescribed cannot be done away with. The Supreme Court in STATE OF PUNJAB v. DAYANAND MEDICAL COLLEGE & HOSPITAL (2001) 8 SCC 664) has held that it is not open to the University or the Government to dilute th e standard by fixing marks lower than what is set out by the Medical Council of India. The Supreme Court has also held that if the University or the Government felt any difficulty they ought to have approached the Medical Council of India for fixing of appropriate standards in that regard and the State Government could not unilaterally frame a scheme reducing the standard in violation of the terms of the Medical Council of India Regulations which is repeatedly stated to be the repository of the power to prescribe standards in postgraduate studies subject, of course, to the control of the Central Government as envisaged in the Act constituting the Council. The same view has also been reiterated by the Supreme Court in STATE OF M.P. v. GOPAL D. TIRTHANI (2003) 9 ILD 13(SC) wherein it was held that the requirement of minimum qualifying marks cannot be lowered or relaxed contrary to the Medical Council of India Regulations framed in this behalf.

8. Learned Advocate General appearing for the respondents submitted that it is not open to the petitioners to challenge the clause

enabling the State Government to reduce the minimum percentage of marks as the petitioners would not be eligible to compete with inservice candidates as the quota has already been fixed for them. Though the petitioners may not be eligible to apply and compete with inservice candidates, once it is brought to the attention of this Court that the condition in clause-28 of the prospectus is inconsistent with the Medical Council of India Regulations and it will have a bearing on the standards of medical education in the State, I am of the view, the Court cannot remain as a passive spectator and allow the State to reduce the minimum percentage of marks than that is prescribed by the Medical Council of India for eligibility for admission to postgraduate medical courses and dilute the standards of medical education in the State.

9. I therefore hold that the State Government has no power to reduce the minimum percentage of marks prescribed by the Medical Council of India for eligibility for admission to postgraduate medical courses, but it is needless to state that the Government, if so advised, is entitled to approach the Medical Council of India for relaxation of Regulation-9 of the Medical Council of India Regulations and unless the Medical Council of India or the Government of India relaxes the minimum percentage of marks specified in Regulation-9, the State Government has no power to reduce the minimum percentage of marks for inservice candidates. It is also relevant to notice the direction given by the Supreme Court in STATE OF M.P. v. GOPAL D. TIRTHANI (2003) 9 ILD 13 (SC) which reads as under:-

" The Medical Council of India, for the present, insists, through its Regulations, on a common entrance test being conducted whereat the minimum qualifying marks would be 50%. The State of Madhya Pradesh must comply with the requirements of the Regulations framed by the Medical Council of India and hold a common entrance test even if there are two separate channels of entry and allow clearance only to such candidates who secure the minimum qualifying marks as prescribed by the MCI Regulations. If the State has a case for making a departure from such rule or for carving out an exception in favour of any classification then it is for the State to represent to the Central Government and/or Medical Council of India and make out a case of justification consistently with the fore-quoted observation of this Court in Dayanand Medical College & Hospital's case (supra)."

10. It is also made clear that if the Medical Council of India or the Central Government does not reduce the minimum qualifying marks for admission of inservice candidates, the seats should not remain vacant and the vacant seats should be diverted so as to make them available to open category candidates.

Clause-48:

11. The next clause that is under challenge is clause-48 and the clause reads as under:-

"One mark for each completed year after the completion of CRRI shall be awarded as service mark for both service/non service candidates to maximum of Ten as on 01.02.2003. (Eg. If a candidate scores 50 Marks in Entrance Examination and completed Two Years after CRRI his total Aggregate Marks will be 50+2=52)."

The clause provides for allotment of one mark for each completed year after the completion of CRRI for both service and non-service candidates with the maximum of 10 marks. The submission of Mr.K.M. Vijayan, learned senior counsel is that the above clause is violative of clause-9 of the Medical Council of India Regulations. According to him, the Medical Council of India has framed the Regulations to determine the academic merit and also prescribed

the procedure to be adopted for both degree and diploma courses and the allotment of marks for experience for both service and non-service candidates is in violation of Regulation-9 of the medical Council of India Regulations.

12. The submission of the learned Advocate General is that clause-4 8 is applicable to all the candidates and it is not open to the petitioners to challenge the same after having received the advantage. His submission is that the petitioners should have challenged the same before they took up the examinations. He further submitted that the Regulation-9 is regulatory in character and it does not prohibit the awarding of one mark for experience. He submitted that the academic merit as found in Regulation-9 does not exclude the practical experience and experience is a relevant factor which cannot be ignored to determine the academic merit. He also submitted that the clause has been introduced on the basis of the directions of this Court given in an unreported judgment in W.P.No.10755 of 1992, etc. batch, (T. Dhilipkumar v. State of Tamil Nadu rep. by Secretary to Government, Education Department, Fort St. George, Madras-9 and others) dated 16.12.1992, and the maximum marks prescribed for experience is 10 and experience can also be included to determine the academic merit. He submitted that academic excellence is not sufficient for the pursuit of postgraduate course and experience is also relevant and if relevant consideration is taken into account, clause-48 is not invalid.

13. I find force in the submission of the learned Advocate General that the petitioners, having secured the advantage of addition of one mark for experience for each completed year of service, are not entitled to question the same after taking up the examinations. This Court in RATHNASWAMY,Dr. A. v. DIRECTOR OF MEDICAL EDUCATION (1986 WRIT LR. 207) has construed the expression, 'prospectus' issued with regard to admission to educational courses and held that the prospectus is a declaration to the candidates that a field for development of educational potentialities is available for exploration and that there could be a chance of success and it is a piece of information and it contains guidelines for admission. The clause that was construed by the Division Bench of this Court in Rathnaswamy's case was regarding allotment of one mark for each completed year of service/practice subject to a maximum of 20. This Court held that there was no infirmity in the selection and the petitioner could not plead total ignorance of the implication of the clause.

14. In SURYANARAYANA RAJU,G. Dr. v. THE GOVERNMENT OF TAMIL NADU, ETC. & OTHERS (1992 WRIT LR. 581) a Division Bench of this Court again considered the question of awarding of marks for number of years of service or practice after M.B.B.S. Qualification and held that the petitioner

having acquiesced in the prescriptions in the prospectus by applying for the course, could not on his non-selection turn round and impeach the very prescriptions. The Division Bench has also referred to the pronouncements of the highest court of the land and held that it is not open to the petitioner to challenge the prospectus after having acquiesced in the prescriptions in the prospectus.

15. In Dr.R.MURALI v. Dr.R.KAMALAKKANNAN (2000) 1 SLR 600) a Full Bench of this Court has held that the petitioner having participated in the examinations after fully knowing the terms and conditions of prospectus is estopped from questioning the selection process. The Full Bench of this Court after referring to the decision of the Supreme Court in Om Prakash Shukla v. Akhilesh Kumar Shukla (1986 SCC (Supp) 285), Union of India v. Chandrasekaran (1998 (3) SCC 694), S. Muthumanickam v. State of Tamil Nadu rep. By Commissioner and Secretary, Education, Science and Technology Department (1985 WLR 357) and Dr. Suryanarayan Raju v. The Government of Tamil Nadu (1992 WLR 579), held that the petitioners having acquiesced in the prescriptions in the prospectus are not entitled to question the same. I hold that the above decisions would squarely apply to the facts of the case and it is not open to the petitioners herein to challenge clause-48 of the prospectus.

16. Further, only one mark is awarded for each year experience subject to a maximum of 10 marks on the basis of the directions of this Court in the unreported decision in in W.P.No.10755 of 1992, etc. batch, (T.Dhilipkumar v. State of Tamil Nadu rep. by Secretary to Government, Education Department, Fort St. George, Madras-9 and others) dated 16.12.1992 wherein it was held that one mark for each year of service irrespective of the place of institution of service should be awarded. Since the relevant clause in the prospectus has been issued on the basis of the directions of this Court, there is justification on the part of the respondents to act in accordance with the directions of this Court. It is, no doubt, true that the directions were issued by this Court in Dhilipkumar's case prior to the framing of the Medical Council of India Regulations. However, the action of the respondents in following the directions of this Court cannot be faulted with. In this view of the matter, it is not necessary to consider the larger question posed by the learned Advocate General that the expression, 'academic merit' in Regulation-9 of the Medical Council of India Regulations would encompass practical experience also. The expression, 'academic merit' has not been defined in the Medical Council of India Regulations and in a wider sense, as contended by the learned Advocate General, it may include practical experience also and the decisions of the Supreme Court in Dr.PREETI SRIVASTAVA v. STATE OF M.P. (1999) 7 SCC 120) and PRE-P.G. MEDICAL SANGHARSH COMMITTEE v. DR.BAJRANG SONI (2001) 8 SCC 694) do support the case of learned Advocate General. However, in a strict sense, the expression, 'academic merit', as contended by Mr.K.M.Vijayan, learned senior counsel, may not include the practical experience as well and the marks secured in the common entrance test alone should be the criteria for admission. In my view, it is not necessary to go into the larger question. Though I uphold the clause-48 of the prospectus for the current year, as I have held that marks were awarded on the

basis of directions of this Court and to maintain judicial discipline as I am bound by the decisions of Division Bench of this Court, yet, I have certain reservations regarding the validity of the stand taken by the respondents in awarding one mark for each year's experience as marks are awarded automatically on the basis of practical experience. Though experience may be a relevant factor, yet, awarding marks automatically depending upon the experience would spoil the chance of a real meritorious candidate who may have lesser number of years of experience making a deep inroad to the merit based selection. It is true that the marks are awarded uniformly to all according to the parameter of experience, but a person with larger number of years of experience would gain advantage because of the experience and he may overtake the meritorious candidate with lesser number of years of experience, not on account of any merit, but by the criteria of experience alone. In other words, a person with merit, but with no experience will start the race with a disability but a person with experience begins with all the advantages of assured marks for the years of experience. Moreover, the assigning of weightage for experience would affect the chance of a candidate in the open category and alter the order of merit. However, it is not necessary for me to dilate the matter further as I have upheld the clause-48 of the prospectus for the current year on the ground that the petitioners have approached the Court after taking up the examinations and also on the basis of the directions of this Court in Dhilipkumar's case (W.P.No.10755 of 1992, etc. batch dated 16.12.19 92). Accordingly, I uphold clause-48 of the prospectus for the academic year 2003-2004.

Clause-61(a):

17. The next clause that is the subject matter of challenge is clause-61(a) of the prospectus which reads as under:-

" The selection will be made by Counselling on Merit and applying Rule of Reservation wherever applicable. 50% of the seats will be made available as Open Competition for selection among both Service/Nonservice Candidates. 50% of the seats will be made available for Service Candidates."

The clause provides that selection shall be made on merit and 50% of the seats are made available as open competition for selection among both service and non-service candidates and the remaining 50% of the seats are made available for service candidates. The submission of Mr.K.M.Vijayan, learned senior counsel for the petitioners is that clause-61(a) is violative of Medical Council of India Regulations. He referred to Regulation-9 of the said Regulations and submitted that students for postgraduate medical courses shall be selected strictly on the basis of their academic merit which should be determined by the competitive test conducted by the State Government or by the competent authority or on the basis of merit as determined by a centralised competitive test held at the national level or as provided in that Regulation. He therefore submitted that while reservation under the Constitutional provisions is permissible, the clause providing 50% of seats made available for service candidates is inconsistent with the Medical Council of India Regulations. Learned senior counsel, in his fairness, has brought to the attention of this Court the decision of the Supreme Court in K.DURAISAMY v. STATE OF T.N. (2001) 2 SCC 538) and submitted that the decision is distinguishable as in that case the Court was dealing with the situation prior to the enactment of the Medical Council of India Regulations. He also

submitted that the Court proceeded on the basis that the scheme envisaged is not by way of a mere reservation but is one of classification of the sources from which admissions have to be made. Learned senior counsel submitted that by the application of clause-61(a), the merit is sacrificed and the dispute raised in K.Duraisamy's case was with reference to the prospectus for the year 1999-2000 when the Medical Council of India Regulations were not in force. Learned senior counsel referred to the decision of the Supreme Court in AIIMS STUDENTS' UNION v. AIIMS (2002) 1 SCC 428) and submitted that the Supreme Court in that case considered K.Duraisamy's case and held that the question whether merit can be sacrificed to such an extent as to be bidden almost a good-bye resulting in candidates too low in merit being preferred to candidates too high in merit and the margin of difference between the two being too wide, did not arise for consideration in K.Duraisamy's case. He submitted that there is a wide margin between the cut-off marks prescribed for open category and for inservice candidates and since merit is sacrificed, the decision of the Supreme Court in AIIMS Students' Union case alone would apply.

18. Learned Advocate General, on the other hand, submitted that the assumption of the petitioner that there is a wide margin between the inservice candidates and open category is not justified and there is no wide margin. He also referred to the counter-affidavit wherein it is stated that the Government would be requiring 3051 Postgraduate qualified doctors to serve in Government Hospitals or hospitals run by local authorities and State Government. It is also stated in the counter-affidavit that private candidates acquiring postgraduate degree or diploma would like to start their own clinics and work in private hospitals and providing more number of seats for non-service candidates would not be in the public interest. It is also stated that the Government has decided to set apart not only 50% of total intake in favour of service candidates and also permitted them to compete with non-service candidates to secure admission in 50% seats reserved for open category. It is also stated that an undertaking is obtained from the service candidates to the effect that they shall serve in Government Hospitals for 15 years after qualifying Postgraduate degree/ diploma course. He therefore submitted that 50% of seats earmarked for inservice candidates is in public interest. Learned Advocate General referred to the decisions of the Supreme Court in K.Duraisamy's case (2002) 1 SCC 428), STATE OF MP. v. GOPAL D. TIRTHANI (2003) 9 ILD 1 3 (SC) and PRE-P.G. MEDICAL SANGHARSH COMMITTEE v. DR.BAJRANG SONI (2 001) 8 SCC 694) wherein the Supreme Court held that it is permissible for the Government to fix such a source or classification of candidates from which selection for admission to the postgraduate colleges in the State has to be made and there is no discrimination or arbitrariness involved in the special provision made to meet a just and appropriate need in public interest. He also referred to the decision of this Court in Dr.R.SHAIKLA v. Dr.S.KRISHNARAJ, PONDICHERRY (2002) 1 MLJ 714) wherein this Court has held that it is a broad classification between two categories, namely, in service candidates and nonservice or private candidates with each one of them allocated exclusively for their own respective category of candidates fifty percent of the seats and the ultimate selection for admission depending upon the inter se merit performance amongst their own category of candidates.

19. I have considered the submissions of Mr.K.M.Vijayan, learned senior counsel for the petitioners and learned Advocate General. It is clear that the Supreme Court in more than one case has upheld the classification between inservice candidates and non-service candidates in the matter of admission to postgraduate medical courses. In STATE OF TAMIL NADU v. T.DHILIP KUMAR (1995) 5 SCALE 208), the Supreme Court upheld the the clause providing allotment for inservice candidates holding that such reservation should not exceed 50% of the seats. In K.Duraisamy's case (2001) 2 SC 538), the Supreme Court upheld the decision of a Full Bench of this Court in MURALI,R. Dr. v. Dr.R. KAMALAKKANNAN (1999(III) CTC 675) and held as under:-

" The mere use of the word 'reservation' per se does not have the consequence of ipso facto applying the entire mechanism underlying the constitutional concept of a protective reservation specially designed for the advancement of any socially-and-educationally-backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes, to enable them to enter and adequately represent in various fields. The meaning, content and purport of that expression will necessarily depend upon the purpose and object with which it is used. Since reservation has diverse natures and may be brought about in diverse ways with varied purposes and manifold objects, the peculiar principles of interpretation laid down by the courts for implementing reservations envisaged under the Constitution in order to ensure adequate and effective representation to the backward classes as a whole cannot be readily applied out of context and unmindful of the purpose of reservations as the one made in this case, more to safeguard the interest of candidates who were already in service to enable such in-service candidates to acquire higher and advanced education in specialised fields to improve their professional talents for the benefit of the patients to be treated in such medical institutions where the in-service candidates are expected to serve. That apart, where the scheme envisaged is not by way of a mere reservation but is one of classification of the sources from which admissions have to be accorded, fixation of respective quota for such classified groups, the principles at times applied in construing provisions relating to reservation simpliciter will have no relevance or application. Though the prescription of a quota may involve in a general sense reservation in favour of the particular class or category in whose favour a quota is fixed, the concepts of reservation and fixation of quota drastically differ in their purport and content as well as the object. Fixation of a quota in a given case cannot be said to be the same as a mere reservation and whenever a quota is fixed or provided for one or more of the classified group or category, the candidates falling in or answering the description of different classified groups in whose favour a respective quota is fixed have to confine their respective claims against the quota fixed for each of such category, with no one in one category having the right to stake a claim against the quota earmarked for the other class or category."

20. The Supreme Court again upheld the classification in PRE-P.G. MEDICAL SANGHARSH COMMITTEE v. DR.BAJRANG SONI (2001) 8 SCC 694) and the Supreme Court held as under:-

" It is not in controversy that during the academic years in question, there was no stipulation by the Medical Council of India of any

minimum eligibility marks to be secured in the entrance examination for admission to postgraduate courses. Though it is said that in 200 0 such a stipulation has been made, for the obvious reason that during the years under our consideration there is no such stipulation, the challenge in this regard does not merit our consideration or acceptance, leave alone the question as to the efficacy or binding nature of the said stipulation, which we do not propose to adjudicate upon in these cases. That apart, as rightly pointed out in one of the judgments of this Court noticed above, mere theoretical excellence or merit alone is no sufficient indicia of the qualitative merits of the candidates in the field of actual practice and application. The doctors, who are in-service candidates in various medical institutions run and maintained by the Government or government departments, have wide area and horizon of exposure on the practical side and they may not have the required extra time to keep themselves afresh on the theoretical side like an open candidate who may have sufficient time at his disposal to plod through books. The in-service candidates in contrast to the fresh or open candidates have to spend much of their time on attending and treating the patients in the hospitals they serve gaining excellence on the practical side and, in our view, they would constitute a distinct class by themselves to be given a special treatment and no grievance can be made out on the ground that the minimum eligibility marks for their selection in respect of seats earmarked for them should also be the same as that of the fresh or open candidates."

21. The Supreme Court considered the question again in STATE OF M. P. v. GOPAL D. TIRTHANI (2003) 9 ILD 13 (SC) and it is interesting to note that in Gopal D.Tirthani's case, the Supreme Court has considered both K.Duraisamy's case and AIIMS Students' Union case, and after considering both the cases, the Supreme Court held as under:-

" To withstand the test of reasonable classification within the meaning of Article 14 of the Constitution, it is well settled that the classification must satisfy the twin tests: (i) it must be founded on an intelligible differentia which distinguishes persons or things placed in a group from those left out or placed not in the group, and (ii) the differentia must have a rational relation with the object sought to be achieved. It is permissible to use territories or the nature of the objects or occupations or the like as the basis for classification. So long as there is a nexus between the basis of classification and the object sought to be achieved, the classification is valid. ..... There is nothing wrong in the State Government setting apart a definite percentage of educational seats at post graduation level consisting of degree and diploma courses exclusively for the inservice candidates. To the extent of the seats so set apart, there is a separate and exclusive source of entry or channel for admission. It is not reservation. In-service candidates, and the candidates not in the service of the State Government, are two classes based on an intelligible differentia. There is a laudable purpose sought to be achieved. In-service candidates, on attaining higher academic achievements, would be available to be posted in rural areas by the State Government. It is not that an in-service candidate would leave the service merely on account of having secured a post-graduate degree or diploma though secured by virtue of being in the service of the State Government. If there is any misapprehension the same is allayed by the State Government obtaining a bond from such candidates as a condition

precedent to their taking admission that after competing PG Degree/Diploma course they would serve the State Government for another five years."

22. A Division Bench of this Court in Dr.R.SHAIKLA v. Dr.S. KRISHNARAJ, PONDICHERRY (2002) 1 MLJ 714) again considered the question and upheld the classification between inservice candidates and nonservice/private candidates. Though Mr.K.M.Vijayan, learned senior counsel submitted that he is not questioning the validity of clause 61(a) of the prospectus as violative of Article-14 of the Constitution of India, yet, according to him, merit is sacrificed in the process of selection.

23. In so far as minimum marks are concerned, I have already held that it would apply both for service candidates and non-service candidates and there are no materials also to show that there is a wide margin of difference between the cut-off marks prescribed for open category candidates and the cut-off marks prescribed for in-service candidates. Therefore, I do not find any material to hold that merit has been sacrificed to the extent which is violative of Article-14 of the Constitution of India in the matter of classification between inservice candidates and open category candidates. As far as violation of Regulation-9 of the Medical Council of India Regulations is concerned, I find that even after the enactment of the said Regulations, it would be open to the State Government to frame rules for admission to its own colleges which is not in any way violative of the Medical Council of India Regulations. I hold that the condition found in clause-61(a) of the prospectus is not in violation of any of the provisions of Medical Council of India Regulations.

24. Moreover, the Supreme Court in KUMARI CHITRA GHISE v. UNION OF INDIA (AIR 1970 SC 35) and D.N.CHANCHALA v. STATE FO MYSORE (AIR 197 1 SC 1762) and a Full Bench of this Court in BHUPESHKAR S.R. AND OTHERS v. THESECRETARY, SELECTION COMMITTEE, SABARMATHI HOSTEL AND OTHERS (1995 WLR 639)
and another Full Bench of this Court in Dr.R.MURALI v. Dr. R.KAMALAKKANNAN (1999 (III) CTC 675) held that the Government would not be denied of its right to decide the sources from which the admission should be made as it is the Government which bears the financial burden of running the medical colleges. Therefore, the State Government is justified in its stand in making available 50% of seats to inservice candidates as it requires 3051 medical practitioners to serve in the Government Hospitals or hospitals run by the local bodies or the Government. The inservice candidates are also required to give an undertaking to serve in the Government Hospitals for 15 years. So far as the candidates selected under open category are concerned, there is absolutely no fetter on them to work in the Government Hospitals or hospitals run by the local bodies or the Government and when the Government felt that there is shortage of hands in the Government Hospitals, the clause making available 50% of the seats to inservice candidates cannot be said to be unreasonable or arbitrary and I hold that the clause is not unconstitutional and cannot be struck down on the ground that merit is sacrificed. Though Mr.K.M.Vijayan, learned senior counsel would submit that the decision of the Supreme Court in Duraisamy's case (2001) 2 SCC 538) cannot stand in view of the decision of the Supreme Court in AIIMS STUDENTS' UNION v. AIIMS (200 2) 1 SCC 428), yet, the

Supreme Court in STATE OF M.P. v. GOPAL D. TIRTHANI (2003) 9 ILD 13(SC) has followed its decision in K.Duraisamy' s case after noticing its decision in AIIMS Students' Union case. I reject the contention of the learned senior counsel for the petitioners upholding the validity of clause-61(a) of the prospectus.

Clauses-32 and 33:
25. The clauses that are next under challenge are clauses-32 and 33 and they read as under:-
"Clause-32: There will no Rechecking/Revaluation/Retotalling of answer sheets.

Clause-33: No candidate will be allowed to take back the booklets and request for provision of Xerox copies of the question booklet and answer sheet will not be entertained."

26. The case of the petitioners is that they are challenging the clauses on the ground of improper valuation and lack of transparency. It is stated that the petitioners undertook examinations for postgraduate medical courses for the academic year 2003-2004 and more than 60 00 candidates appeared for the examinations on 27.4.2003 and the result was published on 6.5.2003 and even before the counselling was held, the petitioners approached this Court on 12.5.2003 on the ground of lack of transparency. This Court admitted the writ petitions on 13 .5.2003 and on the same day, this Court also granted interim injunction as counselling was scheduled to be held on 19.5.2003. Again, the matter came up on 20.5.2003. It is seen from the order dated 20.5.2 003 passed in the interim injunction application that the petitioners had expressed large scale grievance with regard to the marking in the entrance examination that was conducted for the various disciplines of P.G. Degree/Diploma/5year MCH (Neuro Surgery) courses for the academic year 2003-2004. It is seen that on 20.5.2003 there was a representation on behalf of the Government that revised marks list was made ready and the earlier error had occurred only on account of some arithmetical mistake. It is also seen that learned Special Government Pleader also produced a proforma of the list of students bearing their entrance number, 'Q' Code, the correct answers, the wrong answer, the bank answers, the 'E' mark and the 'T' mark. Since learned counsel appearing for the petitioners submitted that they would be satisfied if the break-up figures were given, learned Government Pleader submitted that the list would be published in the Internet in the course of that week. It was also represented by the learned Government Pleader that he would explore the feasibility of publishing the key answers on the Internet by the end of that week. The marks list was released on 23.5.2003. After that, the matter was posted to 27.5.2003. It is also seen that this Court, by order dated 2.7.2003, directed the respondents to go ahead with the counselling and further followup action, subject to the outcome of the writ petitions, and accordingly, the counselling was also done.

27. It is stated that the question paper contained a total number of 250 questions and the answers were evaluated by awarding one mark for every question correctly answered and by deducting 0.25 marks for every question wrongly answered. The mistake seems to have occurred in assigning

negative marks, which made this Court to grant interim injunction. Subsequently, when it was realised that the deduction of the negative marks was not correctly made, the mistake was rectified and correct marks were furnished on 23. 5.2003.

28. The main challenge of the writ petitioners is that the respondents should be directed to furnish key answers and carbon copy and Xerox copy of OMR sheets together with impression sheets to find out whether there is any interpolation with the help of computing authorities. Though it is stated that the respondents have accepted the irregularities in the computation of marks and agreed to publish revised marks with break-up figures which has also been done, but OMR sheets have not been provided to the petitioners who have approached this Court showing that there is no transparency in the case of petitioners.

29. The petitioners placed reliance on the provisions of the Tamil Nadu Right to Information Act, 1997 (hereinafter referred to as 'the Information Act') and stated that the right to information is a statutory right and the petitioner had taken up the entrance examinations and they should be furnished with the key answers including Xerox copy of answer sheet as is done in the case of examinations like Plus Two examinations and professional entrance examinations. It is stated that it is not impossible to furnish the minimum required particulars and therefore clause-32 of the prospectus is ultra vires. Hence, the petitioners approached this Court with the prayer to direct the respondents to furnish the particulars relating to key answers including OMR sheets to the individual petitioners.

30. The Secretary, Selection Committee has given details regarding preparation of question papers, the details of procedure for evaluating answer papers. It is stated by her in the counter-affidavit that some mistakes crept in due to deduction of negative marks for incorrect response without computing the same to 90 and the said mistakes were rectified pending writ petitions and a revised merit list was prepared and placed before the Court on 20.5.2003. It is also stated that the revised merit list containing the names of the candidate, marks secured for correct answers, marks awarded for incorrect response, etc. was published and the revised merit list was also published in the website on 23.5.2003. It is stated that a foolproof method of evaluation of answer sheets of the petitioners is followed. She has also stated that key answers are also not furnished by other medical institutions such as Manipal Medical Institution, Manipal, NTR University of Health Centre, Vijayawada, Andhara Pradesh and by Tamil Nadu Public Service Commission. It is stated that the entire evaluation was done with utmost care and there is no possibility for any error in key answers.

31. The Secretary to Government has also filed a common counter affidavit wherein it is stated that the petitioners have no valid ground to insist on the Selection Committee to furnish copies of answer sheets, Xerox copy of OMR sheets and also to pray for setting aside the entire selection process. The petitioners have also filed a reply affidavit to the counter affidavit filed by the Secretary, Selection Committee.

32. As it is seen from the counter affidavit and as admitted by the petitioners, the third respondent owned the mistakes and rectified the same when the deduction for negative marks was wrongly made and therefore, the only question that remains to be seen is whether the petitioners are entitled to have revaluation of answer books and they are also entitled to claim that the respondents should be directed to furnish particulars relating to key answers including OMR sheets of the individual petitioners.

33. Mr.K.M.Vijayan, learned senior counsel submitted that for a complete transparency in the evaluation of answer sheets, the petitioners should be furnished copies of OMR sheets and key answers so that it would be possible for them to make self-assessment of the marks obtained in the examinations held. Learned senior counsel submitted that the right to get Xerox copies of answer sheets and key answers flows from the provisions of Information Act. According to him, the prospectus is a document of the State Under Article-162 of the Constitution of India and the provisions of the Information Act cannot be interpreted in a restrictive manner and it must be construed to include the document connected with selection process and key answers sheet is a complementary document of the selection process done by the State and if the petitioners are not furnished with the copies of the documents above mentioned, it would amount to denial of their right to information and it would be inconsistent with the provisions of the Information Act and it is not open to the respondents by an executive order to deny the statutory right conferred on the petitioners. He submitted that the petitioners have the right to know how for and how well they performed in the examinations and that can be achieved only by furnishing Xerox copies of the answer sheets and by publishing the key answers. Learned senior counsel referred to the clauses-32 and 33 of the prospectus and submitted that the clauses which deny them such a right are inconsistent with the provisions of the Information Act. Learned senior counsel referred to the procedure followed in the State of Karnataka where there is a complete transparency right from the date of notification till the date of despatch of result of the candidates and according to him, in the system followed by the Karnataka Government, the copies of answer sheets are furnished and key answers are also published in the web site. Learned Senior counsel also referred to the decision of Mr.K.Govindarajan,J. in W.P.No.13528 of 2 000, etc. batch (Minor M.Cedric Joseph, rep. By his father & guardian M.Maria Soosai Manual v. The Government of Tamil Nadu rep. By its Secretary, Higher Education Dept., Fort St.George, Chennai-9) dated 25.10.2000 wherein the learned Judge directed furnishing of carbon copy of question paper immediately after the examination is over and also directed that key answers should be published . Learned senior counsel submitted that the said system has been followed in Professional Entrance Examinations in which more than one lakh students take up the examinations and since the system is followed where large number of candidates are appearing, there will be no difficulty at all in adopting the same system for postgraduate medical course examinations where only about 6000 students would be appearing. Learned senior counsel therefore submitted that clauses 32 and 33 should be declared as violative of the provisions of the Information Act.

34. Learned Advocate General appearing for the State submitted that there is no right of revaluation and it is not open to the petitioners to claim the right of revaluation as a matter of right. He submitted that the petitioners cannot proceed on suspicion. His submission is that as soon as mistakes in awarding negative marks were noticed, the Selection Committed owned the mistakes and rectified the same and when the respondents have rectified the mistakes, it is not open to the petitioners to say that there is malpractice in the evaluation of answer papers. Learned Advocate General also submitted that there are no positive materials before the Court to show that answer books were not valued properly and on the basis of mere allegation, the court may not declare the results as invalid. Learned Advocate General also submitted that there are more than 6000 candidates took up the examinations and out of them, 169 candidates have alone challenged the process of selection and out of 169 candidates, 51 candidates were selected and 75 candidates are in the wait list and 25 candidates were absent and 12 candidates did not come within the zone of consideration. With reference to two persons whose status could not be ascertained, learned Advocate General submitted that their names do not tally with the records available with the Selection Committee. Learned Advocate General submitted that nearly 36 petitioners in various writ petitions have also given letters to withdraw their respective writ petitions. Learned Advocate General also submitted that the expression, 'affairs of the State' found in the Information Act does not extend to educational matters and no ground has been made out to strike down the selection already made.

35. Learned Special Government Pleader (Education), who supported the case of the respondents, also submitted that under the Information Act there is no absolute right on the part of the petitioners to claim any information relating to answer scripts. He submitted that in the case of educational matters, it is not open to the candidates to ask more and more information and answer books given by the candidates themselves cannot be regarded as the 'affairs of the State'. He submitted that no ground has been made out and there are no reasons given for allowing the prayer of the petitioners.

36. Mr.K.M.Vijayan, learned senior counsel, in his reply, submitted that education is coming under the 'affairs of the State' and the prospectus would fall within Article 162 of the Constitution. He submitted that under the Information Act, the petitioners have the right to ask for information.

37. Mr.James, learned counsel appearing for the petitioner in W.P. No.15274 of 2003 referred to paragraphs-6 and 7 of the affidavit filed in support of the petition and submitted that the marks awarded are not real marks and they are fictitious and manipulated marks.

38. I have carefully considered the submissions of Mr.K.M.Vijayan, learned senior counsel and Mr.James, learned counsel appearing for the petitioners and learned Advocate General and learned Special Government Pleader (Education) appearing for the respondents. As far as the right of revaluation is concerned, the Supreme Court has categorically laid

down that candidates who sit in for examinations have no fundamental right to insist for revaluation of answer books, unless revaluation is provided for in the rules. Clause-32 of the prospectus provides that there shall be no right of revaluation or rechecking or retotalling of answer books and the clause is perfectly in order. As a matter of fact, Mr.K.M.Vijayan, learned senior counsel has not questioned the proposition of law that there is no right of revaluation. The decision of the Supreme Court which was relied upon by the learned Advocate General in MAHARASHTRA S.B.O.S. & H.S. EDUCATION v. PARITOSH (AIR 1984 SC 1543) supports the case of the respondents to the extent that there is no right of revaluation.

39. The further question that arises is whether the petitioners are entitled to claim as a matter of right that copies of answer sheets should be furnished and copy of key answers sheet should also be published. The decision of the Supreme Court in Paritosh's case (AIR 1 984 SC 1543) also provides the answer to the same. In paragraph-12 of the judgment the Supreme Court has held that candidates who have taken a public examination are not entitled to participate in the process of evaluation of their performances or to verify the correctness of the evaluation made by the examiners by themselves conducting an inspection of the answer books and determine whether there has been a proper and fair valuation of the answers by the examiners. The Supreme Court in the same judgment also held that it would be in the public interest the result of examinations is published and if inspection and verification in the presence of candidates and revaluation are allowed as a matter of right, it may lead to gross and indefinite uncertainty, particularly in regard to the relative ranking etc. of the candidates besides leading to utter confusion on account of the enormity of the labour and time involved in the process. The Supreme Court also noticed what would be the position, if uncertainty results in and held as under:-

" The resultant legal position merging from the High Court judgment is that every candidate who has appeared for any such examination and who is dissatisfied with his results would, as an inherent part of his right to 'fair play' be entitled to demand a disclosure and personal inspection of his answer scripts and would have a further right to ask for revaluation of his answer papers. The inevitable consequence would be that there will be no certainty at all regarding the results of the competitive examination for an indefinite period of time until all such requests have been complied with and the results of the verification and revaluation have been brought into account."

The decision of the Supreme Court was followed by a Division Bench of this Court in B.RAJAPPA V. THE ADDITIONAL CONTROLLER OF EXAMINATIONS & THE REGISTRAR, UNIVERSITY OF MADRAS (1989 WRIT L.R. 55).

40. In my view, the court in its wisdom cannot substitute its own views or strike down the decision of the policy makers. The policy canvassed by the petitioners may be a better one, but what the Court has to decide is whether the existing policy adopted by the Government is in any way inconsistent with or in violation of the principles of natural justice or in violation of any other provisions of the Constitution of India or arbitrary or unreasonable or unfair. I have already held that the petitioners cannot claim

as a matter of right the right of revaluation. There is no violation of the principles of natural justice in not allowing the students to participate in the evaluation process by the examiners. The counter affidavit filed by the Secretary, Selection Committee has given the details of safeguards adopted in the evaluation of answer scripts. The Secretary, Selection Committee has stated that after the completion of examinations, the scanning of OMR answer sheets is carried out and a print out of the answer sheets is taken for verification of the total number of questions answered, total number of blanks, etc. with original OMR answer sheets and the verification of total number of questions answered, blanks, etc. are done manually and thereafter key answer for each code and subject is entered into the computer in the presence of the officials and print out of the key answers taken for each code and subject are manually verified for the correctness of the data entry of the key fed into the computer and the process of evaluation of each answer sheet is done after scanning the OMR answer sheets and then feeing the key answers into the computer. She has stated that in the above method, there is no chance for error in the process of evaluation. She has stated that the error occurred in awarding negative marks, but the method adopted cannot be said to be faulty, wrong or defective. The counter affidavit of the Secretary, Selection Committee clearly discloses that sufficient precautions are taken for correcting answer sheets. Therefore the petitioners cannot claim as a matter of right that they should be furnished copies of answer books and also copies of key answers. Their claim is based on mere suspicion that their answer books might not have been correctly evaluated.

41. In my view, the method to be adopted for the evaluation of answer books should be left to the discretion of the academicians or the expert body constituted for the evaluation of answer books and they are persons with technical expertise and they have wide experience also in the matter of evaluation of answer books. I am of the view, the Court should not superimpose its view on the method of evaluation done by the Selection Committee. Though learned senior counsel for the petitioners has referred to the practice adopted by the State of Karnataka, it is also stated by the Secretary, Selection Committee that the same practice is not followed in the same State in Manipal Medical Institution, NTR University of Health Centre, Vijayawada, Andhara Pradesh and also in the Tamil Nadu Public Service Commission.

42. As far as the provisions of the Information Act are concerned, I am of the view that they relate only to the affairs of the State and under the Act, the expression, 'information' has been defined in section 2(3) to include copy of any document relating to the affairs of the State or any local or other authorities constituted under any Act or a statutory authority or a company, corporation or a cooperative society or any organisation owned or controlled by the Government. The expression, 'affairs of the State' as found in section 2(3) of the Information Act, in my view, does not extend to answer books given by the students and the Information Act has been enacted for a laudable object of protecting the right of information in the State of Tamil Nadu. The answer books given by the candidates do not fall within the scope of 'affairs of the State' and the evaluation done by the examiners also would not amount to the 'affairs of the State'. Moreover, if a

person claims the right of information, he must establish that he bona fide needs the information. I find that the petitioners have not established that their claim is bona fide in seeking the information. In other words, their attempt is to have the right of revaluation which is expressly denied by the Regulations and to have copies of answer books which is also denied by the Regulations. Since the Information Act does not extend to answer books given by the candidates in the examinations, the petitioners cannot claim as a matter of right that they must be furnished with the copies of the answer books under the provisions of the Information Act. As rightly contended by the learned Advocate General, if such right is extended to answer books, it may even extend to the right to insist for a copy of question paper prior to the examination. I therefore hold that the claim of the petitioners that they are entitled to have copies of answer sheets and key answers is not warranted under the provisions of the Information Act and I do not find any illegality in the provisions of the clauses-32 and 33 of the prospectus in question. Accordingly, the claim of the petitioners to declare the clauses invalid is rejected.

43. As far as W.P.Nos.15274 and 15275 of 2003 are concerned, though it is stated that the petitioners have answered 249/242 correctly against 20/40 incorrect answers and the petitioners would be entitled to higher marks than awarded, it is only on the assumption, the statement has been made and there is no basis for the same and hence, it is not necessary to examine the question further. Accordingly, these writ petitions are also liable to be dismissed. Factually also, I do not find any reason to interfere with the selection already made. It is stated that 36 petitioners have already given letters expressing their willingness to withdraw the writ petitions and there are only 169 writ petitioners in total and out of them, 74 persons are in the wait-list and 26 petitioners have not attended the counselling and 12 persons are not within the zone of consideration. Considering the total number of candidates who had participated in the examinations and number of candidates who have been selected already, I am of the view that factually also, the petitioners are not entitled to succeed.

44. Consequently, all the writ petitions are disposed of accordingly. Connected W.P.M.Ps. and W.V.M.Ps. are dismissed. In so far as impleading petitions are concerned, they are ordered. No costs.

Index: Yes
Website: Yes
na.
29-9-2003

To
1. The Secretary to Govt.,
Health and Family Welfare Department,
State of Tamil Nadu,
Fort St.George, Chennai-9.

2. The Director of Medical Education,
Directorate of Medical Education,

Kilpauk, Chennai-10.

3. The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai-10.